THE NEW-YORK
CITY-HALL RECORDER.

VOL. I. *For June*, 1816. NO. 6

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday* the 3d day of *June*, in the year of our Lord one thousand eight hundred and sixteen—

PRESENT,

The Honorable
JACOB RADCLIFF, *Mayor*,
JOHN B. COLES and JONAS MAPES, *Aldermen*,
JOHN RODMAN, *District Attorney*.
MACOMB, *Clerk*.

GRAND JURORS.

GURDON S. MUMFORD, *Foreman*.

ELBERT ROOSEVELT,	ASHER MARX,
THEOPHILUS PIERCE,	MOSES LEON,
HENRY POST,	JOHN LAWRENCE,
GEORGE PUFFER,	JOHN T. JONES,
NAPHTALI PHILLIPS,	WILLIAM H. IRELAND,
ISRAEL PURDY,	WILLIAM HUNTER,
DANIEL OAKEY,	DANIEL E. TYLEE,
PETER NEVIUS,	WILLIAM HOWELL,
ISAAC MARQUAND,	ABRAHAM LE FOY.

MORDECAI LAZARUS' CASE.

RODMAN & HAMILTON, *Counsel for the prosecution.*

WILKINS & ANTHON, *Counsel for the prisoner.*

Where L purchased goods of M through the intervention of C a broker, and for payment executed a promissory note to C, who indorsed it to M. who received it expressly under the agreement, and in confidence that L should assign and deliver an invoice or bill of lading for a cargo of goods, in a distant port, of which he was the owner and consignee, to C as security for the payment of such note, which bill of lading C should hold as a trustee, should L deliver the bill of lading to C, without a regular transfer and afterwards, by false pretences, procure its re-delivery to himself, for the purpose of proceeding to such distant port, and converting the proceeds of the Cargo to his own use, which were intended to be applied to the payment of the said note, C hath such an interest in the bill of lading as will support an indictment under the statute (1 vol. N. R. L. P. 410 Sec. 13) against L for obtaining goods by false pretences from C.

An equitable right or interest is embraced within the words "*or other effects whatsoever*," contained in that statute.

Where divers pretences, alleged to be false, are laid in the same count in an indictment, and either of them, sufficient within itself, is substantially proved to be false on the trial, the indictment is sufficiently supported; nor is it necessary that every pretence so laid should be proved false.

It is not necessary, in a case of the nature above described, where during the negociation for the purchase of the goods, and at the time of the delivery of the bill of lading to C by L, and a short time previous to its re-delivery, a variety of false representations is made by L to C. to deprive him of a vested right, the truth or falsity of which C had no opportunity of knowing except by such representations, that these pretences, on the faith of which the bill of lading is obtained, should be made at the precise time of the re-delivery. And should the Jury believe, from all the circumstances in the case, that L resorted to such representations, as an artifice to deprive C of such right, they are justifiable in finding L guilty of obtaining goods by false pretences; the falsity of which pretences, or either of them, may be inferred from circumstances.

The defendant, during the term of April, was indicted for obtaining goods by false pretences from Augustus F. Cammann, under the 13th section of the statute* (1. vol. N. R. L. p. 410.)

The indictment contained one count, which, after stating that on the 14th day of December, 1815, Augustus F Cammann, was possessed of a certain invoice or bill of lading of a cargo of goods which were at Wilmington in North Carolina, which invoice had been deposited with Cammann by the Defendant as security for the payment of a promissory note, made by the defendant to Cammann and by him indorsed to Gurdon S. Mumford, in part payment for a quantity of Cotton; that Camman so being possessed of this invoice, was about to proceed to Wilmington to bring the said goods to New-York, and sell them and apply the proceeds to the payment of that note, proceeded to state divers pretences which the defendant used to deprive Cammann of the bill of lading, that is to say: 1. That he was a merchant of large fortune and extensive credit, a partner of the house of Lazarus and Cashmore of London, which was trading on a capital of 100,000*l* sterling. 2. That he was possessed of divers goods in the city of New-York, of great value; shipped by his partner from London to New-York, to try the market with a view to future mercantile operations. 3. That he was also possessed of divers other goods in Halifax. 4. That he was also possess-

* For the use of such of our readers as cannot conveniently refer to this statute, we here extract the substance of so much of the section above quoted, as we deem necessary to the understanding this case: "That every person, who shall hereafter be convicted of knowingly and designedly, by false pretence, obtaining from any other person any money, goods or chattels, *or other effects whatsoever*, with intent to cheat or defraud any person, etc. shall be punished by fine and imprisonment or either," etc.

ed of divers other goods shipped from London to New-York, then on their way and which would be daily arriving; and that it would be necessary for Cammann to remain in New-York, to take charge of them as a factor or agent of the defendant. 5. That the defendant would himself proceed to Wilmington, and ship the said goods to the said Cammann in New-York, to be applied to the payment of the said note, as was intended. The indictment concluded by alleging, that the defendant, by means of these several false pretences, did unlawfully &c. obtain from Cammann divers goods, wares, merchandize and *effects*, to wit, an invoice or bill of lading of goods to the amount of $5000.

Gurdon S. Mumford, a witness on behalf of the prosecution, stated that in the month of October last, he had a large quantity of cotton for sale, which he advertised, and that Cammann, a broker, made application and informed him that he knew a rich man who had lately arrived from England, who wanted to purchase Cotton.

After some considerable negociation on the subject, it appeared that Mumford was unwilling to trust the defendant for as large a quantity as he wished, but the contract was at length concluded on the following terms: Cotton to the amount of about $12,000 was to be sold by Mumford to the defendant, who was to pay $5000 in cash on the delivery, and for the balance, execute a promissory note of the firm of Lazarus and Cashmore, to which he belonged in England, payable in sixty days to Augustus F. Cammann who was to indorse it to Mumford. To secure the payment of the note, the defendant was to assign and deliver to Cammann, an invoice or bill of lading of the cargo of the ship Diana, at Wilmington in North Carolina, which ship had then lately arrived at that place, from England, with a consignment of the cargo, consisting chiefly of Glass ware, from the house of Lazarus and Cashmore in London, to the defendant.

This contract having been concluded between the parties, under the express understanding and agreement, that the bill of lading should be assigned and delivered to Cammann, as a trustee, and that the proceeds of the cargo, on its arrival, should be applied to the payment of the note; and that Cammann was to receive his commission as a broker, for the sale of such cargo, the cotton was sold and delivered by Mumford and $5000 paid by Lazarus, who executed a promissory note in the name of Lazarus and Cashmore to Cammann, and Cammann at the same time endorsed it to Mumford. The bill of lading was also delivered by Lazarus to Cammann, at the time of the consummation of the contract, which was on the 31st day of October last. This witness stated, that he would not have trusted the defendant upon his own responsibility; and that it was upon the faith and under the confidence that the bill of lading was to be assigned to Cammann, that he assented to this agreement. He expressly stated to the defendant, at the time of the consummation of the contract, that he relied on the bill of lading as security in the hands of Cammann as a trustee, to which the defendant assented.

This bill of lading had been before assigned by the defendant to the captain of a packet for the defendant's passage from England, and reassigned by the captain to the defendant, as appeared from the bill of lading.

Augustus F. Cammann, a witness on behalf of the prosecution, on being sworn, coincided with Mumford in his testimony, and also testified to these additional facts. He was introduced as a broker, to the defendant, some time in July or August last. After this time, the defendant, in divers conversations, represented to Cammann, that he was a partner of the house of Lazarus and Cashmore, Glass and Nail manufacturers in London. He came out to this country to try the state of the market, and finding it good, he determined to establish a branch of his house in this country, and carry on business on a very extensive scale. He conversed with Cammann, relative to the purchase of a vessel for his business, and promised that he would make the commission business of Cammann very lucrative, and his house the seat of very extensive business. He, nevertheless, at all times, enjoined on Cammann, not to mention the nature of his business, or his plan to any person, but to keep it a profound secret.

He further represented, that his house in London had vast quantities of goods, and *could send on any quantity, even to the amount of 100,000l. sterling.* He said that a cargo of goods had arrived at Wilmington, but that this was but a mere trifle to what he expected. By the next ships from England he expected bills of lading for a great quantity of other goods which were coming on. *He had also sixty gross of gold watches coming to Halifax.*

A short time previous to the purchase of the cotton above mentioned, the defendant informed Cammann that he wished to make a shipment; and, on advising with Cammann, concluded to ship that article. After examining samples of the cotton of Mumford, which Cammann had in his office, he offered Mumford, through the intervention of the witness, his own notes for the balance which should remain for the quantity to be purchased, after paying $4,000 in cash, which offer was rejected. The defendant on hearing that Mumford wished security, said, that *he scorned the idea of giving security by endorsement*, which he, nevertheless, could obtain to any amount he pleased; and further declared, that he could purchase goods to any amount for his own notes. However, after some further negociation, the defendant acceded to the proposition made by Mumford, as he pretended that he wished Cammann to have the commission for the sales. The contract was concluded at the time and in the manner above related, and the bill of lading, which before had been delivered by Lazarus to Cammann for safe-keeping, was again deli-

vered by Cammann to the defendant, and by him re-delivered. This cotton was shipped by the orders of Lazarus to one Samuel Levi of Liverpool, on account and on the risk of Lazarus & Cashmore, and Cammann effected insurance thereon, and became responsible for the premium.

In about a month after the sale of the cotton, Cammann, finding that neither the goods from England or those from Wilmington, which he had been induced to believe were on their passage, had arrived, he began to grow uneasy, made inquiry of, and expressed his apprehensions to the defendant on the subject, who framed several artful excuses to lull him into security. About this time the defendant informed him that the *watches had arrived at Halifax.*

It appeared further, that the apprehensions of Cammann were so far removed, and his confidence in the standing and responsibility of the defendant so much strengthened by the representations made by the defendant and one Sandford, who had been introduced by the defendant to Cammann, that it became a question between the defendant and himself, whether the one or the other should go to Wilmington and bring on the goods. In an interview, however, with Mumford, in which Cammann, the defendant and Sandford were present, Mumford insisted that Cammann should go himself on that business; and Sandford and Lazarus, without saying much on the subject, soon left the room.

It having been concluded that Cammann himself should proceed to Wilmington, he engaged his passage in a schooner for Norfolk. On the day of his departure, the defendant inquired when he intended to go; and on learning that he was to go on that day, the defendant represented that *he had received information that the goods were coming on, and that they were expected by him every moment, that perhaps some were at the Hook already, and that goods consigned to him would afterwards come on by every arrival from London.* He further said, that his friends had advised him to go to Wilmington himself, as he could do the business better there than here; that Cammann must stay here and take charge of the goods from London on their arrival, which he the defendant could not do himself: and that Sandford would be the bondsman with Cammann at the custom house.

Cammann then reminded the defendant of the circumstances and conditions under which the bill of lading was delivered to him as a trustee, and that the goods were to be shipped to him, that the proceeds thereof should be first applied to the payment of the note to Mumford; to all which the defendant assented and agreed.

The defendant then received from Cammann blank bills of lading for the cargo of the Diana, at Wilmington, which bills Lazarus instructed Cammann to fill up as far as was practicable. Upon receiving these bills of lading and a letter of instructions, which were delivered by Cammann without any suspicion of a fraudulent design, the defendant departed for Wilmington.

Cammann waited about a month after his departure, and received two letters from Lazarus, informing him, that he had not received the goods by reason of some difficulties which were stated. The date of the second letter, by which the defendant informed Cammann "*that he had not got the goods, but that he was almost sure of getting them by Friday following,*" was on *Tuesday, the 13th of January, at Wilmington.* This letter also stated, as a reason for not obtaining the goods, that it was owing to want of money to pay the freight and duties; that he was then writing to a friend at Charleston, to obtain a loan of money; that the moment he obtained the goods he would inform Cammann, and that the post went out of that place only *once a week.*

On the recept of this last letter, Cammann started for Wilmington. It appeared by the subsequent testimony of Cammann, that the day on which this last letter was written, the goods were ready to proceed to Charleston, the defendant having obtained them before that time; that the post goes out of Wilmington *three times a week*, and that the defendant never mentioned at that place that he intended to bring or send the goods to New-York. The nails, a part of the cargo of the Diana, were sold by the defendant at Wilmington, and he proceeded with the remainder of the goods to Charleston, and about the last of January sold them at a price below the *sterling invoice.* The cargo was sold at about $6.000, which, in the city of New-York, at a fair valuation, was worth between 14 and $15,000.

Cammann proceeded to Charleston, in pursuit of the defendant, but before his arrival ascertained that the goods had been sold as before mentioned, and that the defendant had proceeded to Wilmington. On his way to that place he was informed that the defendant had proceeded to Philadelphia whither he proceeded; but not finding him there, he returned to New-York. Not finding him in this city, he returned immediately to Philadelphia in pursuit of the defendant. The next day after his arrival he saw Sandford, before named, who was also a creditor of the defendant, and was also in pursuit of him.

It appeared that Cammann and Sandford both ascertained that the defendant had proceeded down the Delaware to take passage for some foreign country, and both started in pursuit of him, but not together. Cammann finding that the defendant had taken passage in a vessel bound to Belfast, of which George Craig was captain, and that the vessel was gone to Newcastle, about 16 miles down the Delaware, procured a written order from the owners to the captain, directing him to give up the defendant

and his baggage to Cammann and not to let him proceed in the vessel. With this document he proceeded to Newcastle, procured a boat, went on board the vessel, and ascertained that the defendant and one Myers had taken passage, but that the defendant had left the vessel, having taken out of his trunk, then on board, all that was valuable in a *black handkerchief*. The trunk was delivered to Cammann, on the order of the owner, and carried to Philadelphia.

On his arrival at that place he procured a key, opened the trunk and found a pocket-book containing a whole set of bills of exchange for 600*l.* sterling, in favor of Samuel Levi, London, dated Richmond, 5th Feb. 1816.

Cammann put the pocket-book with its contents in his own trunk, locked the other and proceeded in the stage towards New-York. Fourteen miles this side of Philadelphia the stage stopped, and while Cammann and the other passengers were at dinner, the defendant with five or six other persons arrived in a stage from Philadelphia. He thereupon accused Cammann of robbing him, and said that he was a young runaway lawyer from New-York and was his prisoner. He urged Cammann to return to Philadelphia, and Cammann urged him to return to New-York, which he refused to do unless Cammann would return what he had taken from the trunk. While Camman was at dinner the trunk of the defendant was taken off the stage; but by the assistance of some of the passengers in the stage with Cammann, it was taken by force from the defendant, and replaced on the stage.

The defendant, on being asked of what he had been robbed, said that he had been robbed of a bill of exchange of 6000*l.* sterling, and that Cammann and Mumford both were swindlers and cheats; but he did not mention any sum *in money* of which he had been robbed. On being asked by Cammann if he would say this of Sandford, he replied no, for that he had paid Sandford the day before: and a young man who was in company with the defendant then declared he saw the defendant pay Sandford.

Several of the passengers in the stage with Cammann, among whom was a Mr. Charettellon, a Russian gentleman, & Russel H. Nevius, on being afterwards sworn, corroborated this part of the relation of Cammann. Cammann returned to New-York, and deposited the trunk and pocket-book with the contents in the police-office.

The next day after his return, Simon Myers and John Sandford, witnesses hereafter named, came to the office of Cammann and made particular inquiries respecting his pursuit of the defendant. They were informed by Cammann, and shown what he had obtained of the effects of the defendant from the trunk; when Sandford told him that he had received a letter from the defendant, informing him that Cammann had robbed him of a large sum of money in gold and silver.

Before the introduction of any evidence on behalf of the defendant, Anthon moved the court for his acquittal, on three grounds:

1. A bill of lading, even if obtained by false pretences, is not such an instrument as will sustain an indictment under the statute.

2. Even should it be considered by the court as a proper *subject matter* for an indictment, yet, in this case, it was not assigned to Cammann in *writing*, and he had neither a legal or equitable title sufficient to sustain the allegation in the indictment; that the *goods, &c. of Cammann* were obtained by false pretences.

3. The pretences laid in the indictment were not *all* proved; and with regard to some of the pretences, the proof offered varied from the indictment.

Rodman answered these several objections thus:

1. A bill of lading, if obtained by false pretences, is a proper subject matter for an indictment under the statute, and is embraced within the general clause in the act—"*or other effects whatsoever.*"

2. To deprive a man of a *vested right* by false pretences whether this right is legal or equitable, comes as much within the *mischief* intended to be guarded against by the statute, as if money or any other tangible effects were thus obtained; otherwise the public would be completely without remedy, and the most glaring frauds, in various cases, would go unpunished.

3. Several false pretences, in this case, are *substantially* proved; and if even one, alleged in the indictment (which *per se* would have been sufficient to sustain the indictment is proved, the indictment is sufficiently supported. All the pretences alleged in the indictment need not be proved. All the circumstances in this case, taken in connexion, exhibit *false pretences*, sufficient to establish a case of fraud of uncommon magnitude.

The court overruled the several objections raised by the counsel on behalf of the defendant; strongly intimating an opinion, that the bill of lading, in this case, *delivered* to Cammann as a trustee, on the express agreement and understanding of the parties, as detailed in the testimony, created such an interest in Cammann, that to deprive him thereof by false pretences was indictable under the statute, the general clause in which—"*or other effects whatsoever,*" was sufficiently extensive to embrace such an interest. This the court considered the most material objection, but gave the counsel for the defendant leave to move in arrest of judgment, on this or any other ground they might think proper to assume should the verdict be rendered against the defendant.

The principal testimony on behalf of the defendant, relative to the credit and responsibility of his house in London, was, that during the year 1813, that house made several consign-

ments of nails and glass, to the amount of about 4,000*l.* sterling, to Lewis Abrams, at Malta. who, on being introduced as a witness, stated that he understood that the credit of the house was very good. Several other witnesses on behalf of the defendant stated, that from their acquaintance with the house, they believed the credit of the house good.

Opposed to the testimony on this point, was that of George Brinkerhoof, Thomas Stokes and Simon Myers.

The first of these witnesses is an attorney and counsellor at law in the city of New York. He stated that he received a note for collection against the firm of *Lazarus & Cashmore*, to the amount of $4,000, from one of his friends in this city, who received it with a power of attorney for collection, from a respectable house in London, and that he commenced a suit thereon against the defendant.

Stokes stated that he, being a creditor of the defendant, called on him for payment; which not receiving, he wrote to his correspondents in London, to call on the house to which the defendant belonged, and received word from them, that when they called on Cashmore he informed them that he knew not where the defendant was.

The defendant admitted to Stokes, that the cargo of the Diana was sent to the firm of Lazarus & Cashmore *to sell on commission*, and that the firm having many notes due, he came on to this country to find a good market and to sell this cargo for the purpose of raising money to answer those demands. He offered to endorse the bill of exchange of 600*l.* sterling, above mentioned, to Stokes, and to make the transfer good for all his creditors. When Stokes requested him to turn out the cotton procured of Mumford in payment, the defendant told him that the cotton was in the hands of his partner, and he had no control over the same.

It also appeared that Stokes received a power of attorney from one of his correspondents in England, to collect a debt against the defendant, in which power he was named *Elliot Lazarus;* and it also appeared that the defendant admitted to Stokes that he was known by that name in London.

Simon Myers stated, that when the defendant was about going to Wilmington, he borrowed $200 of him for expenses, on the recommendation of Cammann, and that Sandford afterwards took up the note for this money at the Bank.

For the purpose of discrediting the testimony of Cammann, the defendant introduced John Sandford, and Simon Myers, who, on being sworn, both stated, that Cammann declared he was glad the defendant had gone to Wilmington; it was a fatiguing job: that Cammann stated to them in his office, after his return from Philadelphia, that while on his way from that city to New-York, he was overtaken y the defendant, and six or seven men, who took away the trunk. Sandford also stated that the defendant being indebted to him, he advised him to go to Wilmington himself for the goods, rather than to suffer Cammann to go, *who was not a man of responsibility.*

Sandford further stated, that Cammann called on him to advise Lazarus to go to Wilmington, and was very anxious that he should go: that he declared to the witness, that he wished the vessel, in which the cotton, (sold by Mumford to Lazarus) was shipped, should be lost, that he might gain the amount for which she was insured.

Sandford also stated, that he went after the defendant to Philadelphia, and from thence to Newcastle, and then returned to New-York, but that he could not find, *nor did he see* Lazarus on his rout, either at Philadelphia or any other place, until he arrived at Powles Hook, where he was overtaken by him. He further stated, that he was, and is now, a creditor of the defendant, and had not received his pay, or any part, and that when the defendant returned from Philadelphia, he came publicly through the streets to his house, and was not concealed.

To counteract the effect of this testimony, Cammann positively denied the declarations imputed to him at his office by Sandford and Myers.

John S. Dusenberry, one of the police officers of New-York, was at the Lancaster Stage house in Philadelphia, at the time Sandford was there. On being sworn as a witness on behalf of the prosecution, Dusenberry declared that he saw Sandford at this stage house, at the time the defendant took passage in a stage with the witness from the same house; that the defendant when he came into the stage, had something which appeared to be of a small bulk but heavy, packed close and tied up in a black handkerchief, which he held very carefully between his legs while in the stage, and that after the stage had proceeded a short distance, the defendant, as if he had forgotten something of importance, jumped out of the stage into the mud and returned back.

It appeared by the testimony of James Warner, one of the police Magistrates of New-York, that Sandford came to him *at night* after the office was shut, for him to draw an affidavit of a person whom he stated, had been robbed at the southward. Sandford told him that the circumstances were such, that *he did not wish them to be known*, nor did the applicant wish to make a public appearance. Afterwards, Sandford came with the defendant to this magistrate for the above purpose, but it appeared that the complaint of Cammann had been previously lodged, and measures were taken to apprehend the defendant, who was accordingly arrested, and Sandford became his bail in the sum of twelve thousand dollars.

Gurdon S. Mumford and Thomas L. Ogden, proved the general good character of Cammann,

the first of which had known him eleven, the other thirteen years. Mumford stated that before he employed Cammann in his business, he made inquiry relative to his honesty and integrity, and became well satisfied; and both these witnesses stated that he was an honorable man.

The counsel for the defendant urged to the jury his acquittal, principally on the grounds before stated. They also contended that no reliance should be placed on the testimony of Cammann.

Rodman and Hamilton, *contra*.

His honor the Mayor, charged the jury that if, from the whole circumstances in this case, taken in connexion, they believed that the defendant, on this occasion, resorted to deceit and artifice to deprive Cammann of the bill of lading, it would be their duty to find him guilty. He charged the jury in favour of the prosecution, on the several questions of law, raised by the defendant's counsel.

He was found guilty by the jury.

On the last day of the term, the counsel for the defendant moved in arrest of judgment, and also for a new trial. These motions were brought on and argued at the same time.

To support the motion for a new trial, the counsel read an affidavit of Bernard O'Blenis, the clerk of the police, stating that he had a conversation with Cammann, who informed him that he had requested the defendant to receive the bill of lading and proceed to Wilmington, and that it was so received at the solicitation of Cammann.

The counsel contended on this motion, that had this evidence appeared, the case would have assumed a different aspect before the jury; and that since it was newly discovered, they ought not to be deprived of its benefit.

On the motion in arrest of judgment, Anthon, after referring to the section of the statute on which this prosecution was founded, stated the following points on which the defendant relied

I. The words "*or other effects whatsoever*," contained in the statute, which is strictly *penal*, are nugatory. On this point he insisted that the same construction should be given to the statute under consideration, as had been given in England to the statute 14 Geo. 2d c. 6. enacting that stealing sheep, *or any other cattle*, should be felony without benefit of clergy. That statute was held in that country to extend to nothing but *mere sheep*, the words, *or other cattle*, being too loose to create a capital offence, and another statute 15 G. 2d c. 34 was passed extending the provisions of the former act to each kind of *cattle by name*. He contended that in a penal statute, which should ever be construed strictly, the legislature should be explicit, and leave nothing loose and uncertain. To this point he cited 1. Black Com. P. 88. 2d Easts Crown Law, P. 616 and 3d Durn. and East, p. 100.

II. If then the first position assumed be correct, and the words, *or other effects whatsoever*, should be expunged from the statute, then our statute should be a transcript of the English statute (30 G. 2d C. 24) and the offence charged in this indictment would not be embraced thereby. He cited 2d East's C. L. P. 832 and 6 T. R. 565.

III. In this case, the *property* in the bill of lading at the time it was delivered to the defendant, was not in Cammann, who was a mere trustee for Mumford. It is necessary that the property in the subject matter of this indictment should be actually vested in the person in whom it is laid in the indictment, otherwise, should the defendant be acquitted on this indictment, he would be liable to another prosecution for the same offence; nor could he take advantage of the plea of *autrefois acquit*, which would be contrary to the maxim, that no man should be put in jeopardy twice for the same offence. To support this position he cited 2d Starkie's Crim. Plead. 471. 1 Camp. Nisi Prius 212.

IV. There is no sufficient description of the bill of lading in this indictment. It is stated, merely as *an invoice or bill of lading*, without naming the vessel, or describing the cargo or goods. This is too loose and uncertain and subject to the same danger and inconvenience to the defendant as would arise from the want of property in Cammann above mentioned.—Under this head he referred to the 3d Durn. and East. p. 160.

V. The bill of lading was not *assigned* to Cammann, who by the mere delivery acquired no *legal* title. It is alleged, however, that he had an equitable title, and that he might have enforced an assignment in a court of chancery.—Admit this for the sake of argument. Cammann then had only an equitable title, which courts of common law in a civil case would not notice, much less can such title be noticed in a criminal case. If in the case now before the court, this equitable title, as it is called, should be regarded, it would be giving to a penal statute an equitable interpretation against the prisoner, which would be contrary to the genius and spirit of the common law. 5 Bac. Ab. Tit. statute Let. I. No. 9.

VI. But neither Mumford nor Cammann could even enforce an assignment of this bill of lading in a court of equity. This, if any, is a mere chattel interest, and the court of chancery will never decree a specific performance, except in a case relating to real property. 1 Madox Chan. 320. 3 Atkyns. 382. 8 Vol. Vesey.

The counsel, after stating the obove positions and reading, and commenting on the several authorities cited, adverted to the several grounds assumed on the trial, and further contended that no false pretences had been proved on the trial; that the pretence alleged in the indictment, (which they contended was the most material) that the defendant would himself proceed to Wilmington and bring the goods to New-York,

referred to a future transaction and not to any thing then in being. It was also stated in the indictment that the defendant represented to Cammann that the house of Lazarus and Cashmore, *was trading on a capital of* 100.000*l. sterling;* the proof was that he represented that his house *could send on goods to any amount, even to the amount of* 100,000*l. sterling*. This variance was fatal.

With regard to the indictment, they urged to the court that where a number of pretences is alleged in the same count, as in this case it was incumbent on the public prosecuter to prove each and every pretence as laid. Had he inserted as many counts as there were pretences, then, and then only, would he have been entitled to succeed by proving less than the whole.

They further contended that it had not been shown on the trial that these pretences, or either of them, was *false*.

Rodman, after premising that the opposite counsel had not furnished him with the points on which they intended to rely, and that, therefore, he had not brought authorities to support him in replying to these several points, proceeded to answer the several positions assumed by the opposite counsel, in order.

I. The court will never grant a new trial merely on the ground of newly discovered evidence. 3 Vol. John. Rep. 170, 252 and 271. 4th ib. 425. 5th ib. 248. 8th ib. 36. 13 East Rep. 416.

II. To the first point raised in the motion in arrest of judgment, he answered, that the general clause "*or other effects whatsoever*," was peculiar to our own statute, and sufficienty extensive to embrace the subject matter in this indictment. The word *effects*, was of a very extensive import, and included choses in action, and unless the court assumed the province of legislation, they could not undertake to decide that the clause under consideration was nugatory. 2d. Black. Com. 504, 516. Toller's Law of Exec. 77, 307.

III. To the third point raised by the opposite counsel, he answered, that Cammann had *possession* of the bill of lading, and in addition had a vested right therein. The property described in that instrument was to be sold *by him*, and *he* was to apply the proceeds to the payment of a note on which he was responsible to Mumford He had, therefore, not only possession, but a special property, which was sufficient.

By the Court to the Counsel—Could Cammann sustain an action to recover the value of this bill of lading, and has he not the same *possessory right* in this instrument, as a sheriff has over property taken in execution, as a common carrier has over property entrusted to his care?

Rodman. Undoubtedly; the courts have ever held, that where a man has a possessory right, he can ever assert that right against all men except the legal owner, and this court has decided that in an indictment for larceny, it was sufficient to allege the property to be in him who had a mere equitable title. Ridgway's case, Ante P. 3 and 4.

IV. The description of the bill of lading is sufficient to apprize the defendant on what we relied, and by his own fraud he has deprived the prosecution from giving a minute description, to have attempted which, while the bill of lading was in his possession, would perhaps have subjected us to a variance, which might have been fatal. The counsel contended that the description was sufficiently certain, and cited 2d East's Crown Law 837, 838. 1. Starkie's Crim. Plead. 88, 89.

V. No particular form of words is requisite to create a trust. The intention in this case was, that the bill of lading should be held by Cammann, as a lien on the property, contained therein, and the court, in such cases, always look at the *intent*. 10 John. 505.

By the court.—After obtaining this bill of lading, had the defendant died, would there have been any remedy on behalf of Cammann, to compel the personal representatives of the defendant to assign this bill of lading, according to the agreement of the intestate?

We think that the delivery created a lien on the property, and that to deprive Cammann, of that right in the manner stated in the testimony, was a *fraud*.

Rodman further contended, that, in this case, a number of false pretences were laid in the indictment, several of which had been substantially proved. It was not necesssary for the public prosecutor to *falsify* the several pretences alleged This would be impossible; for example, how could we prove that 6 gross of gold watches had *not* arrived at Halifax. But we do show, from all the circumstances in this case, combined, that it was a matter nearly impossible, that those watches could belong to the defendant. If they had arrived, as he represented, it was in his power to show it. And so with regard to the other pretences.

The indictment in this case is in exact conformity with established precedents. He cited 2d Starkie's Crim. Plead from 469 to 476. In this case the jury have found that it was by means, at least of a *false pretence*, that the defendant deprived Cammann of this bill of lading, and the court cannot, in a motion in arrest of judgment, regard matters dehors the record.

The court took time until the following term to delver their opinion on these motions and before the time in which the court was to decide the question, Mordecai Lazarus, having restored a part of the property, of which he had defrauded Mr. Mumford, and having been confined in Bridewell for a considerable time, he was discharged on the advice and recommendation of the court, and a *nolle prosequi* entered on the indictment.

(MOBBING—RUSTLING.)

ANDREW MICKLE & ELIZABETH, his wife.

JASPER CROPSEY & JOHN BLAIR'S CASES.

RODMAN & SAMPSON, *Counsel for the prosecution in the first case.*

BOGARDUS, *Counsel for the defendants.*

RODMAN, *Counsel for the prosecution in the second.*

MAXWELL, *Counsel for the defendants.*

A man who is in peaceable possession of a tenement, though holding over after the expiration of his term, is justifiable in making use of as much force as may be necessary in repelling an attempt made by any person, without the aid of legal process, to dispossess him by force.

Though he who hath been forcibly ousted from a naked possession, by the owner of the premises, cannot maintain trespass, yet in retaining such possession, he has a right to repel force with force.

It is *highly imprudent* for an inspector of an election, single-handed, to attempt to prevent a noise made by a vast multitude of people assembled near the doors where the election has been held. *Query.*—Is it consistent with his duty as an inspector ?*

The two defendants, Mickle and his wife, were indicted for an assault and battery committed on Lewis Thiery, and during the last term, the two other defendants were indicted for the same offence, committed on John Baker.

It appeard on the traverse of the indictment against Mickle and his wife, that Lewis Thiery, above named, is a Frenchman, who does not understand the English language, and before he was sworn as a witness, Ulysse Roumellette was sworn as an interpreter.

The facts were shortly these. The defendant, a merchant tailor, during the last year had a written lease from William Edwards and Elizabeth, his wife, colored people, who keep an oyster cellar in the Park, near the Theatre, for a part of the same building occupied by Edwards. This lease expired on the first day of May last. During the month of February preceding, a bill or notice to let, as is customary in this city, was put up by the defendant, at the request of the landlord, on a conspicuous place on the premises, and it was well understood by the parties that the premises occupied by the defendant were to be hired to another.

Previous to the expiration of the lease, Thiery the Frenchman, hired the same premises by another lease, duly executed by Edwards and his wife, for the succeeding year.

On the first day of May, at twelve o'clock, Thiery came with part of his goods to take possession, accompanied by Mrs. Edwards, The defendant refused to give up the key. An application was then made on behalf of the landlord and his new tenant to Alderman Lawrence and the police-magistrates for advice and assistance. In the testimony of Thiery he called the Alderman, "Comissaire de police," and "un gros bel homme." A police magistrate—a big handsome man.

By reason of the great influx of foreigners, and divers other causes, on that day, much difficulty existed in every part of the city on account of tenancies. There were more tenants than tenaments to contain them; and many very respectable families applied to, and were provided by, the corporation with rooms in the Alms-house until they could provide for themselves elesewhere. Applications of a similar nature with that made by Edwards and Thiery, poured in from all quarters—all the constables and marshals were at the polls of the election—New-York seemed to pour forth at once into her streets, her thousands of men, and women, and children, of all ages, colors and conditions—and carts loading and unloading—furniture piled here and there—houses turned upside down, and carriages and carts rattling, and chimny-sweeps crying, and *tea rusk horns blowing* (by far the most villanous sound that ever assailed mortal ear) made the *tout ensemble*, "confusion, worse confounded." This was not, therefore, a fit season to procure much assistance or correct legal advice from the police or any other magistrates.

"Leges silent inter arma."

Where arms prevail—the law must fail.

By reason, however, of some hint or suggestion which fell from "un gros bel homme," but which, in the progress of the trial, was traced to the recorder of this city, the Frenchman, in company with Mrs. Edwards and several colored men, among whom was one Johnson, at four o'clock of the same day, came to the door of the room of which the defendant, his wife and several of his journeymen were in possession. They were then engaged in packing up their furniture and the stock of the tailor's shop, preparatory to moving. The door was locked and access from without denied. The besieged had several shelalahs and an old blunderbuss for defence. The defendant stood against the door on the inside, and Mrs. Edwards and Johnson pressed for entrance on the outside. The Frenchman was behind the colored men, with a bundle, ready to take possession as soon as entrance could be obtained. The door was forced open, and in etering, a blow was aimed at the head of Johnson with the aforesaid blunderbuss, which he fortunately avoided, and the intended death-doing blow fell on his shoulder. Mrs. Edwards and her party then entered, and delivered (as was thought) *peaceable* possession to the Frenchman, who brought in some of his

* "That if any person shall be guilty of any disorderly conduct at any election, or during the time of the canvass, *the major part of the inspectors* at such election are hereby authorised and required to commit the offender to the gaol, etc. And all sheriffs, etc. are required to aid and obey the *inspectors* herein." (2d vol. N. R. L. p. 256, sect. 17.)

things, and with Johnson and the other black men, began to throw the furniture and the made and unmade cloth of the shop into the street, while the defendant was absent at the police to get assistance. Almost as soon as Thiery had entered, the defendant's wife, who was in a situation *non nominandum*, saluted him in the face—with her fist. He was too much of a Frenchman to return the *compliment* with the same *politeness*. At first he stood amazed with his hands on his breast—*Je n'entends pas*—then, by reason of the blow, and considering that they were acting in pursuance of the advice of *un gros bel homme, et commissaire de police*, he became more active in bundling the things into the street. In throwing out a bundle, either by accident or design, he repaid the blow of the fair assailant with interest, by sending it against her head, and knocking her down, with the side of her face against the wood-pile.

The defendant returned without *legal* assistance, and found a great part of his furniture and the materials of his shop in a woful pickle, and, as Edmund Burke would say, "trodden under the hoofs of the swinish multitude." As he approached the scene of action, he cried out "Huzza! now I've the strongest party." The people, seeing the things thrown in the street, and hearing the hubbub, collected to the number of two or three hundred. A re-entry was made by the defendant, who found his wife in possession, and a part of the goods remaining. An attack was then commenced by the defendant, and others, on the Frenchman, and he was beaten unmercifully, and two of his foreteeth knocked out. He was immediately dragged or carried feet foremost into the street, by the people; and the cry of "Kill the Frenchman and negroes," was vociferated right merrily. The Frenchman retreated, and took refuge in the apartment of Mrs. Edwards.

The Mayor, with several other officers, arrived near the scene of action about the time the Frenchman was dragged into the street, and ascertaining who had originally the peaceable possession, reinstated the defendant and restored order.

From the intimation given by the court, in relation to the rule of law applicable to a case of this nature, hereafter stated in the charge, Bogardus declined addressing the jury, and Sampson, after making some pertinent remarks to the jury on the evidence, concluded by saying, that if such enormities as had been exhibited on this trial, committed by the defendant, were suffered to pass with impunity, instead of those wholesome restraints, calculated to preserve the peace of society, the jurors might expect to see club-law, and mob-law, and blunderbuss-law, and woman-beating-law established; and—"Huzza! Now I've the strongest party," the order of the day.

Rodman cited the case of Hyatt vs. Wood, (4th John. Rep. p. 150,) to show, that where a tenant holds over after the expiration of his term, and the landlord turns him out by force, he is not liable to an action of trespass.

His honor the Mayor charged the jury that the defendant being in peaceable possession of this tenement, had a right to resist the entry made by force to dispossess him. The authority read from Johnson, upon which the counsel for the prosecution relied, related to a private suit, brought by a tenant who had a mere naked possession against him who had the legal title, for a forcible dispossession. In that case, the court held that trespass would not lie, but expressly decided that the party, thus entering with force and strong hand, to oust the tenant, was indictable.

As far as respects the public peace, the Frenchman, and those in his company, had no right to enter this tenement in a forcible manner; and the defendant had a right to repel force with force. On his return from the police a part of his goods remained in the house, and he was not, therefore, divested of his possession.

The only question for the determination of the jury is, did this defendant make use of more force than was necessary for retaining and continuing the possession of this tenement? If he did, he is guilty; if not, he ought to be acquitted.

The jurors could not agree, and were discharged by the court.

On the traverse of the indictment against Cropsey and Blair, it appeared, that on the last day of the last election, at the sixth ward, in this city, after the poll had closed, and before the inspectors had proceeded to canvass the votes, the defendants, with a vast multitude of people, were assembled near the door of the room where the election was held. One of the company had killed a large eagle on Long-Island, and brought it over, in proper person, to grace the festivities of the closing day. Orator Blair stood, encircled by the people on all sides, with an electioneering hand-bill, which he occasionally read, and harangued the people in an audible voice: "My friends, hear me! Hear what I shall now say to you: and if you are not convinced—why then you may vote as you please." Directly over the head of the orator the eagle sat sublime. Awakened from his *leaden* slumber by seraphic sounds the bird of Jove extended his wide soaring pinions; and ever and anon, as the orator spoke, fluttered and flapped them in token of joyous acclamation. The heart-cheering juice of the sugar-cane moved the tongue of the orator in sweetly soothing warblings, and made the eyes of many of his auditors to shine like—junk-bottles.

While the orator was in the full tide of rhetorical inspiration, Baker, the prosecutor who was then just returning from doing his *necessary business without*, approached the rostrum and asked Blair why he made that noise. Baker further told him, that if he did not stop, he would put him *where he did not wish to be*. The

Apostle of Liberty, somewhat *moved* by this aristocratic threat, made a very *brief digression* from his subject, by crying "*Hustle him!*" Some of the witnesses, however declared they stood near Blair, and that those words came from another quarter, and not from him. "*Hustle him!*" was responded from a hundred voices at once, and lo! the inspector was hustled. Now he was, for the moment, borne aloft, and was made to travel fast over a hundred heads; anon, he felt the stony pavement *below*, and the grinding weight of shoe-leather *above*, in every aching limb. Now he rose and attempted to escape; and now the "stormy waves of the multitude," strong, impetuous, and irresistible, pressed, pursued, and overwhelmed him.

To conclude, the inspector, before could escape, was much injured, and he was obliged to disguise himself in the coat of a friend and go *across lots*, before he could get in and resume his seat among the inspectors. It was his belief, but he would not be positive, that Blair first cried out "*Hustle him!*" but it did not appear that Blair, otherwise, took an active part against him. The other defendant was recognized by Baker among the crowd. He had previously known this defendant from the circumstance of his having sold milk to Baker's family. As soon as he caught Baker's eye he endeavoured to conceal himself among the crowd. Baker also declared that the noise made by the people without disturbed the busines of the inspectors.

After the arguments of the counsel, his honor the Mayor charged the jury carefully to weigh and examine the testimony, and if they believed the defendants, or either of them, to have been engaged in the commission of this outrage on the prosecutor, either by aiding, abetting, or assisting, or by inciting others to injure him, it would be their duty to find them or either of them guilty; otherwise to acquit them. The jury pronounced the defendant not guilty.

SUMMARY.

Thomas Henry, William Allen, James Golden, Henry Bush, Amos Corlis, John Lyons, Timothy Logan, Julian Kyler, Robert Cotterel, and Thomas Dayly were sentenced to Bridewell, for petit larceny, the three first for six months each; the others for shorter periods of time.

Edward Van Orden (see ante, p. 62) was indicted, tried, and found guilty of petit larceny, in stealing two shirts; and also for an assault and battery. He was sentenced to Bridewell for one year. This too, within about a month since his brother was sent to State Prison for life! (Vide ante, p. 81.)

John Van and John Dickson, who, with Van Orden, were Highbinders, were indicted, tried, and convicted of a riot and assault. It appeared that these wretches were in the habit of traversing that part of the city in and about Corlaer's Hook and Bancker-street, armed with heavy dangerous clubs, for the purpose of creating riot and disturbance. They were sentenced to Bridewell for sixty days each.

John Alexander was indicted, tried, and found guilty of grand larceny, in stealing a considerable quantity of clothes and new cloth, contained in a bundle belonging to Russel Kelsey, Zael Woodworth, and Warren Church. The bundle was taken from on board a sloop, in which the owners of the property, and the prisoner, came passengers. When taking out his own things, the prisoner told captain Morris, who commanded the sloop, that the bundle was his. It was delivered, and afterwards, the owners, in company with Henry Abel, one of the police officers, found the greater part of the articles in or near the house occupied by the prisoner. A part of them was concealed.

James Branson was indicted, tried, and found guilty of grand larceny, in stealing a silver hunting watch, chain, and key, of the value of $49, the property of Israel Robinson. On Sunday evening, the 19th of May last, the prisoner stole the watch at the house of William Van De Water, at Corlaer's Hook; the prisoner voluntarily confessed it, and the watch was found under the pillow of the bed where he had slept, in consequence of the information given by him.

John Francis, a mulatto, about thirteen years old, a cabin-boy on board the sloop Huntress, commanded by Benjamin Beecher, was indicted, tried, and found guilty of grand larceny, in stealing a bank bill of $100 from the pocket-book of the captain, on the passage of the sloop to New-Haven. The prisoner offered the bill to Levi Smith, of this city, who, from every circumstance, knew he had not come honestly by it, and detained it. He said he obtained the bill from his mother, who lived in Brooklyn, who got it for washing: but, when the captain accused him of the theft, he said he found it on the cabin floor.

John Smith and Daniel Hill were indicted, tried, and found guilty of grand larceny, in stealing an anchor of the value of $30, the property of Isaac Smith, Nathaniel Smith, and Henry K. Townsend. Smith, one of the prisoners, came to John H. Tuttle, and offered the anchor for sale, and the prisoners afterwards sold it for $3, and Tuttle paid the money to Hill, who had the same in a boat. Hill declared, on the trial, that he was guilty, but that Smith was not; that he was not present when it was stolen, and that he (Hill) sent the other to offer it for sale. Smith declared the same.

Joseph Thompson was indicted, tried, and found guilty of grand larceny, in stealing seven double cased silver watches, the property of Thomas Richmond. The prisoner stole the watches out of a trunk, at the house of Oliver Tayler, in Pearl-street, and sold them to dif-

ferent persons. Five of them were reclaimed by the owner.

Thompson was sentenced to the state prison for four years; the five prisoners next preceding, for three years each.

William Taylor (Vide ante, p. 28 and 29) was brought from bridewell, pale, emaciated, wretched. On being brought up to receive sentence for several preceding terms, he exhibited a forlorn spectacle. A young man in the flower of life, crying, begging for a suspension of his sentence!

He was sentenced to state prison for three years.

THE SITTINGS,

Before the Hon. JONAS PLATT,

Commenced on Monday the 10*th, and ended on Saturday the* 29*th of June.* 184 *causes were on the calendar, and there were* 30 *trials and inquests.*

MAYOR'S COURT.

This term there were 395 *writs returnable,* 298 *of which were returned served, and* 100 *causes were on the calendar.*

At a special court of Oyer and Terminer, and General Gaol Delivery, holden at the City-Hall of the City of New-York, commencing on *Monday* the 24th, and ending on Thursday the 27th day of June, in the year of our Lord, one thousand eight hundred and sixteen:

BEFORE

The Hon. JONAS PLATT,

One of the Justices of the Supreme Court of Judicature of the State of New-York.

JACOB RADCLIFF, *Mayor*, and
GEO. BUCKMASTER & PETER CONRY,
Alderman of the said City.

(MURDER)

PATRICK BLAKE'S CASE.

RODMAN, *Counsel for the prosecution.*
SAMPSON and D. B. OGDEN, *Counsel for the prisoner.*

In the traverse of an indictment against a man for the murder of his wife, by inflicting a wound under her left breast, with a knife, the public prosecutor cannot show that a scar, near the mortal wound, was occasioned by a stab previously made on the deceased by the prisoner, unless he fill up the chasm of time elapsed, by connecting the former with the latter occasion of the wound, and showing, as it were, an entire continued transaction.

In such a case, though the public prosecutor hath a right to show frequent quarrels between the prisoner and the deceased, to establish the *malo animo* yet, he cannot go back to a remote period, and show a particular quarrel, unless he follow it up with proof of a continued difference flowing from such quarrel.

Where such case depends wholly on circumstantial proof and a variety of circumstances is presented to a jury, some of which operate strongly against, and others in favour of the prisoner, and, when combined and balanced in the mind, produce a painful doubt relative to his guilt or innocence, it is the duty of such jury to acquit the prisoner.

The prisoner was indicted for the murder of Margaret Blake, his wife, on the 22d day of April last, by inflicting one mortal wound under her left breast, with a knife, of which mortal wound she instantly died.

On the arraignment of the prisoner on the first day of the term, the court assigned Mr. Sampson as his counsel, and on the Wednesday following, the day assigned for his trial the court associated with Mr. Sampson, David B. Ogden esq.

Rodman, in an impressive address to the jury, pointed out the nature of the crime, of which the prisoner at the bar stood charged. He adverted to the definition of the offence, contained in the 1st vol. East's Crown Law, p. 214, showing that it consisted "in voluntarily killing any person, in the peace of the people, of malice aforethought, either express or implied in law," that this "*malice* is not confined to particular ill will to the deceased, but is intended to denote an action flowing from a wicked and corrupt motive, a thing done *mala animo*, where the fact has been attended with such circumstances as carry in them the plain indications of an heart regardless of social duty and fatally bent upon mischief."

After reading and commenting on the above authority, he proceeded to show the jury the nature of circumstantial evidence, as applicable to this crime, from a passage in the same book, (p. 223.) That circumstantial evidence, in a crime of this nature, is the most satisfactory of any from whence to draw the conclusion of guilt; for a combination of circumstances, over which the prisoner has no control, forming altogether the links of a transaction, cannot concur to form an erroneous conclusion of his guilt.

After briefly stating the circumstances of the case, which we shall hereafter fully detail, the counsel read a passage from Swift's Evid. page 135, to show the difference between positive and circumstantial evidence, and concluded his opening to the jury, by laying down these general principles, drawn from the authorities quoted, as the basis on which this case, on behalf of the prosecution, rested: That where a man is in a situation to commit a particular crime, and it appears that none else could have committed it, there, the proof of his guilt is positive. A presumption shall stand, except the contrary is proved.

John Bedient sworn. I am the Coroner of this city. On the morning of the 23d day of April last, the prisoner, with another, came to my house, and the prisoner said that he went to bed between 9 and 10 o'clock of the preced

ing evening in the same bed with his wife, and that he woke at about four in the morning, and found her dead. I inquired whether she died in a fit, to which he said he knew nothing about it, and wished me to go and view the body I proceeded with the prisoner and his companion immediately to a cellar kitchen in Anthony-street, in which there were three places for sleeping, one of which was represented as the place where the prisoner and his wife slept and this was on a bedstead; the other places were (where it was said two women slept) in bunks or miserable beds, the nearest of which I should judge to be within three or four yards of the bed where the prisoner slept; one of these bunks was in full view of the prisoner's bed.

On my arrival, I turned up the clothes from the body, and found a wound under her breast, I think her right breast, but I can tell by recurring to the examination of the jury.

By the Court. You must state from your present recollection.

Bedient. My impression is that it was her right breast, but am not certain. There was a great deal of blood in the bed and on her clothes. The body was lying on the left side. The prisoner appeared totally indifferent and insensible. I sent for surgeons to examine the wound. I discovered the scar of a wound near the same place where the recent wound appeared, and asked the prisoner how that wound was made. who said that it was made by falling on a knife she held in her hand.

After the examination of the deceased, I asked the jury whether they would wish to examine the prisoner. At the request of the jury, the prisoner took off his coat, and I discovered blood on the shirt-sleeve of his right arm, between his wrist and elbow. There also appeared to be blood under the roots of his finger-nails. I asked him how that blood came there? He said he did not know, and appeared to be ignorant—was stupid or insensible.

About this time. Abner Curtis, one of the police officers, brought a jack-knife, four or five inches long in the blade, on which there was blood. Prisoner was asked whether that was the knife, to which he answered it was. He was asked whether he knew how the blood came on the knife, and answered that he did not.

Rodman, (producing a jack-knife, about three or four inches in the blade, the point of which was sharp, the blade straight, and thick in the back) *to the witness*—Is this the knife?

Bedient—The very same, though I was somewhat mistaken in the length.

Dr. Thomas Cock sworn.—I am a surgeon. On the morning of the 23d of April last, I was called by the order or request of the coroner, to examine the wound inflicted on the body of Margaret Blake. This wound was under the left pap between the 5th and 6th ribs. In a short time after I came, Dr. Stevens came in with instruments adapted for such an examination. An incision was made by him, and I saw the result of the examination. The weapon with which the wound was inflicted, apparently progressed between the cartilages of the fifth and sixth ribs, in the direction of the heart.—The wound appeared to have been done with a knife or other sharp-pointed instrument. Dr. Stevens put his finger in the wound, and said that it went in the direction of the heart. I saw an old scar near the new wound.

Rodman.—I wish the court to note that part of the testimony.

Sampson, counsel for the prisoner. We do not see what this has to do with the case. We wish the public prosecutor to explain his views in relation to this part of the evidence.

Rodman. May it please the court. I stated in the opening that I intended to show there were frequent quarrels between the prisoner and the deceased, to establish this general malevolence towards her; and I purpose to show, in the progress of this trial, that on a former occasion, the prisoner stabbed the deceased with a deadly weapon, and inflicted a wound, which then failed in its object, but occasioned this scar. I contend this will be proper evidence to show the *evil intent* which actuated his mind. He cited Swift's Ev. p. 153.

By the Court.—This, as an insulated fact, remote in point of time from the transaction forming the charge the prisoner is now called on to answer, is inadmissible. So a former quarrel, unconnected with the transaction wherein the death ensued, cannot be given in evidence. But if you can fill up the chasm of time between that wherein the first and second wound was inflicted, showing that the latter flowed from the former occasion, or was connected therewith; or if you can show there were frequent quarrels between the prisoner and the deceased, taking place but a short time preceding her death, you are at liberty to produce such evidence. But we think, without such restriction, the introduction of such evidence would be extremely dangerous,

Dr. Richard S. Walker sworn.—I was called on to visit the deceased, in company with Dr. Stevens and others. Dr. Stevens examined the wound, which was on the left side, directly under the angle of the breast. He tried to introduce a small probe, and found it difficult. The cartilaginous part of the ribs appeared to have been penetrated transversely, by some sharp-pointed instrument, which entered the sack, or membrane of the heart.*

Rodman.—Dr. Walker do you think that knife could have inflicted the wound you examined on the deceased?

---

* This, in technical language, is called the *pericardium*. It covers the heart, inclosing it to its basis, and its use is to keep the heart in its place without interrupting its office, and to prevent its friction with the other parts. *Rep.*

Dr. Walker, (*examining the knife.*) I particularly examined the separation of the ribs, and from the appearance of that separation, I am inclined to think that the wound could not have been inflicted with this knife. It appeared to have been pierced very clean. In that part, the rib is of a soft, spungy, cartilaginous substance. A small probe could not be introduced; and it appears to me, that it could have been introduced through an incision made with this knife.

By the Court. Dr. Walker, after the instrument, whatever it might be, was withdrawn, would not the cartilaginous parts, through which the instrument passed, have naturally collapsed?

Dr. Walker. It is probable that the cartilaginous part of the ribs might have collapsed from the contraction of the muscles. I did not examine the wound with a view of ascertaining whether it could have been inflicted with this instrument. If it was, I should think it must have been a violent thrust.

Dr. Alexander H. Stevens sworn. I am a surgeon, and have been in the habit of dissecting subjects in Europe. At the time mentioned by the other witnesses, I went to view and examine the body of the deceased, which was drawn up for that purpose. Some considerable blood was on her left side, some on her linen, and some on her hair. The wound was in the place described by the other witnesses. Serum ran therefrom. I endeavored to introduce a blunt instrument to ascertain the direction of the wound, and found that it went towards the heart. I found a difficulty of penetrating the chest with a director, and, of course, made a dissection, by which I first ascertained that the instrument, with which the wound was inflicted, had passed through and entirely divided the rib, which, in that place, was about two thirds of an inch in breadth. One part of the rib, through which the instrument passed, was fractured. After a way was cleared, I introduced my finger into the chest, and found much coagulated blood in the cavity. I satisfactorily ascertained, and believe that the instrument entered the left ventricle of the heart. I believe that such a wound might have been inflicted with this knife.

James Hopson, one of the police magistrates, sworn. On the 23d day of April last, the turnkey of Bridewell, in my presence, took out of the prisoner's waistcoat pocket this knife, which he said was his. The knife, at that time, had some appearance of blood, but looked nearly as it does now. Blood was on his shirt, and appeared at the roots of his nails.

Dr. John K. Rogers sworn. I was pressnt at the examination of the deceased, with Dr. Stevens. My opinion is that the wound inflicted could have been made with this knife; and I fully coincide with the doctor in every particular of his testimony.

Catharine M'Gee and Jane M'Fall, called and sworn.

M'Gee. On the 22d day of April last, I lived in the same apartment with the prisoner and his wife. I had lived there about five weeks. Jane M'Fall also lived with us, and we had separate places for sleeping. The prisoner and his wife slept on a bedstead in full view of the place where I slept. On that day I had been away, and returned at about five o'clock in the afternoon, and found the deceased in bed. Mrs. M'Fall was in the room. About eight or nine o'clock in the evening, the prisoner, who is a labourer, returned from his work, and the deceased was still in bed. He went to the bed and said something to her, and she answered, but what, I cannot say. I had spoken to the deceased in the course of the afternoon, and asked her to get up, to which she answered, "Let me alone," and I thought she was drunk. After the prisoner returned, I went to getting supper; and when it was ready, we pulled the table near the bed whereon the deceased lay. The prisoner sat on the foreside of the bed with us, and finished supper, which consisted of potatoes and fish. In about an hour after, we all went to bed: but, before going to bed, I went to the bed-side where the deceased lay, to bind a handkerchief round her head, because I thought her drunk, and this would do her good. I discovered some blood on the back of her hand, which might have proceded from a scratch; and the prisoner, who was then sitting upon the foot of the bed, angrily told me to let his wife alone; and when I inquired of him how the blood came there, said it was none of my business. I did not then think much of the blood, but thought of it the next morning, and I mentioned the circumstance to Mrs. M'Fall before we went to bed. I did not hear any noise or disturbance through the night; but very early in the morning, about four o'clock, I was awake, and the prisoner said to me, "Are you asleep?" I answered, No. The prisoner then said, "I am afraid Peggy is dead, she will not speak to me." Says I, that cannot be, for she was well enough in the afternoon and evening before. Wake her, says I, perhaps she is asleep. Prisoner then said she was dead and stiff. He struck up a light, and, from my bed, I saw him shake her, and discovered that she was actually dead. He said, "I am a poor man this morning." I told him to go for the neighbours—he went out, *and did not return till several hours afterwards with the coroner.* Mrs. Hanly, one of the neighbouring women, came in soon after. I was so much frightened I could not rise from my bed, nor did I see the wound till after the arrival of Mrs. Hanly. A great number of people came into the room. I do not know that the prisoner lived more unhappily with his wife than is common. I never had any difference with the deceased.

Jane M'Fall.—I am a poor woman: have lost my right arm, and am somewhat hard of hearing, and work in the House of Industry. I slept in the same room with the prisoner and his wife. In the morning I heard him cry out three times, Peggy! I had lived in the house about eleven weeks. I never knew of any difficulty between the prisoner and the deceased. Catharine M'Gee did not, the evening before the death of Mrs. Blake, mention to me about the blood on her hand. I did not hear any conversation between the prisoner and his wife that evening. Mrs. M'Gee and deceased were as intimate as sisters.

John Bedient, again called. I examined the clothes and bed to try to find the instrument which occasioned the wound. I found none. I am now convinced that the wound was on the left breast of the deceased.

Doctors Stevens and Walker again called.—Such a wound would be apt to produce almost instantaneous death. The person might have groaned: but how far sleep or drunkenness might have prevented this, we cannot determine.

Dr. Benjamin R. Robson, sworn.—It is my opinion, founded on actual observation, that a wound in that part of the heart would have occasioned instantaneous death without a groan.* It must have been a violent thrust; and if it went through the rib, it must have been fractured.

Dr. Matthew Cunningham sworn.—I saw the wound and believe it could have been inflicted with this knife, and that it would have caused instant death. I thought the cartilages of the ribs were divided. I examined the bed to find the instrument, but found none.

Nicholas C. Everett sworn.—I was the foreman of the Coroner's inquest that sat on the body. The prisoner was indifferent, said he knew nothing about the murder, and gave no satisfaction whatsoever. I have understood by common report, that the prisoner and the deceased lived unhappily together. No person on the jury thought that Mrs. M'Gee discovered fear—no suspicion fell on her. I have known her for a considerable time, and have heard nothing against her character. I saw blood on the shirt and arms of the prisoner, and searched the bed, and could find no instrument which could have caused the murder.

Catharine Hanly sworn.—I live a near neighbour to the prisoner. At four o'clock in the morning, the prisoner called out to my husband to let him in, and when I opened the door, he said "Peggy is dead." I went with him to his apartment, and he went with me to the bed-side. Prisoner said he had no hand in her death, and knew nothing about it. *He staid in the room, after I came there, about an hour*, and then went for his son, and when his son came, the prisoner went for the coroner.

Mrs. M'Gee is a married woman, whose husband was then in the country but is now in this city. She said that she knew nothing about the death, and that the night before, she saw blood on the hand of the deceased.

William O'Conner sworn.—I lived in the same house with the prisoner: was waked very early that morning, and when I came into the room, I saw three women, one of which (Mrs. Hanly) was dressed: the other two, Mrs. M'Gee and Mrs. M'Fall, were not. In a short time after I came, the prisoner and his son entered the room. I told the prisoner, it was a terrible thing to happen, in the course of the night, in the same bed with him. He denied any knowledge of the manner in which she came to her death, and said he had no hand in it.

Rodman then read the prisoner's examination taken at the police. This examination did not, in any particular, contradict any account of this transaction the prisoner had before given. It was, when taken together, an enlargement of the circumstances of a case, then already involved in great doubt and mystery. It served, at any rate, if creditable, to bring the murder home to one of the three persons who slept in the room with the deceased, during the night of the 22d of April, after they had ratired to rest. These facts were distinctly stated:

1. The prisoner, when supper was ready, went to the bed-side and asked his wife to partake, *which she declined.*

2. The prisoner fell asleep, while his wife and the two women *were conversing about the old countries.* This conversation is again recognized distinctly in the examination.

3. When he arose in the morning, he found the door bolted.

4. The blood on his arm was occasioned by laying it over the deceased, in the morning, when he discovered she was dead.

Neither of the women, however, remembered this conversation between themselves and the deceased.

Abner Curtis sworn.—I am one of the police officers. I was at the house of the prisoner before the surgeons came, and searched the house faithfully, and could not find any instru-

---

* The reason on which this opinion is founded was not shown on the trial. It is well known that the office of the left ventricle of the heart, is to propel the blood through the whole body; that of the right, to propel it through the lungs only. The left ventricle is much the thickest and strongest. The action of the left ventricle, in thus forcing the blood through the human system, in its dilation, may be likened to that of a forcing pump; and it is obvious, that when the propelling power is destroyed in either, all action must suddenly cease. Besides, it should be considered, that from the left ventricle, the great artery or canal arises, which deals out its branches to every part of the body. From the curved part this artery, a little above the heart, arises the carotid artery which runs directly on both sides of the larynx to the brain in divers ramifications. Hence, a wound in this ventricle must necessarily produce sudden death. *Rep.*

ment capable of inflicting the wound. The knife, here produced, did then exhibit a different appearance from that which it has now. It was bloody, and the hands of the deceased, especially at the roots of the nails, were bloody, as if the whole of the blood had not been washed off. He told me he had washed his hands.

Rodman.—I rest the cause.

Nehemiah Allen, sworn on behalf of the prisoner.—I was the keeper of the Bridewell, and searched the prisoner when brought there. I took out of his pocket this knife, and I do not think it was materially different from what it is now.

Doctors Cunningham and Stevens, again called and examined by the Court.

Cunningham. When I saw this knife, there was every appearance of clotted blood on the back of the blade. I repeat, that it is my opinion that a wound, made in that part of the heart, would occasion instantaneous death.

Stevens.—I am confident that the wound inflicted on the deceased, penetrated the left ventricle of the heart.

Here the testimony on both sides was closed. We regret that our limits forbid us to present to our readers the entire arguments of the eminent counsel who managed and defended this prosecution. We are constrained to strip the speeches of every embellishment, and subject them to a severe analysis In the luminous charge of the court, the prominent points of the testimony will be presented.

Sampson and Ogden —This case is involved in much doubt and mystery. There are strong presumptions against the prisoner; stronger in his favor. The benignity of the law requires the jury to give more weight to the former than the latter. That the deceased was murdered is admitted. The only question is, did *the prisoner* murder her? The public prosecutor must rely on the strength of his own case; he cannot call on us to disprove that which it is first incumbent on him to establish. The inquiry in this case is, not who could have committed this murder, if the prisoner did not. The account the prisoner has given of this transaction from the commencement, has been plain, consistent and uniform. It has substantially corresponded with the other testimony adduced on behalf of the prosecution. Flight, concealment, and fear, the inseparable concomitants of guilt, are expressly negatived by all the testimony. No motive to commit this horrid crime existed. The proof of domestic difficulties between the prisoner and the deceased failed on behalf of the prosecution The testimony of M'Gee is, to say the least, strange and equivocal. It stands contradicted in various particulars. The doctors disagree. All is doubt and uncertainty. But if he did not commit this murder, who did? We cannot—we are not bound to show. It is difficult to penetrate into the mysteries of the case, and wise and discreet jurors will pause and hesitate long, before they will render a verdict against the prisoner because he cannot explain a transaction which the public prosecutor has not done.

Rodman.—I shall recur to the facts in the case, and contend that they are inconsistent with the innocence of the prisoner. If the jurors, after a mature consideration of all the circumstances, believe this, they will find him guilty. From all the facts in the case, the conclusion is irresistible, that one of the three persons, who staid in the apartment that night, committed this murder. It is clearly established that she must have been murdered after the others had retired to rest, and in the dead of the night The door was bolted. Neither Catharine M'Gee nor Jane M'Fall, had they been disposed, would have undertaken this horrid deed in his presence, for fear of certain detection. The latter woman had not the power, and neither of them had the least motive. M'Gee and the deceased were as intimate as sisters. It is preposterous and absurd to suppose that either of these women committed the crime. If they did not, he did. He has not produced a single circumstance either in favor of his character or in explanation of the dark transaction I have shown him in a situation in which he might have committed the crime, and none else could have committed it. I leave it to the jurors.

By the Court, delivered by the Hon. Jonas Platt. Gentlemen of the Jury —The prisoner at the bar is charged with the crime of murder, committed on Margaret Blake, his wife. That a horrid murder, under the most aggravated circumstances, was committed on this woman, is certain: the great difficulty in the case consists in correctly determining this important question, whether Patrick Blake did commit this murder? The law on this subject is well settled. Murder is defined, the killing of a person, in the peace of the people, with malice aforethought, either express or implied in law. Whether such murder was committed by the prisoner, depends on a careful examination of all the facts and circumstances of this case, from which the jury is to deduce the conclusion of his guilt or innocence.

It has been justly remarked by the counsel on behalf of the prosecution, that as this crime is generally perpetrated in secret, where there are no eye-witnesses of the fact, that circumstantial evidence must be resorted to, and in various instances is sufficient.

On this occasion, I shall not go minutely into the evidence: it has been particularly stated, and ably commented on by the counsel on both sides; and must be fresh in your recollection. I shall merely advert to the prominent points in the case, and leave it to your determination, with such remarks as the court consider its nature requires.

The sory of this transaction is short and simple. It appears that the prisoner and his wife lived, in an obscure situation, in Anthony-street, in this city. There were two women, Catharine M'Gee and Jane M'Fall, living as inmates in his apartment. On the afternoon of the 22d day of April last, the deceased was in bed, and the two women were in the room; and she was supposed to have been in a state of intoxication. Between eight and nine o'clock in the evening of the same day, the prisoner returned home from his labor, and the deceased was still in bed. While one of the women was preparing supper, the prisoner was near the bed for a considerable time, and spoke to his wife, and she answered him, but not distinctly enough to be heard by the witness M'Gee. After supper was prepared, the table was drawn near the bed, and the prisoner, sitting on the bed ate his supper with the two women. Between nine and ten o'clock, Mrs. M'Gee, if she is entitled to belief, undertook to bind a handkerchief round the head of the deceased; and in doing this, she saw blood on the back of the hand. She inquired of the prisoner how it came here, who angrily told her it was none of her business, and required her to let the deceased alone.

They retired to rest, and about four o'clock in the morning the prisoner called out to the deceased and gave the alarm to the women. A light was procured by the prisoner; and after examining and ascertaining that his wife was dead, the prisoner said that he was a poor man that morning. He called in a neighboring woman, staid about an hour, went for his son and brought him, and then went immediately for the coroner. There is nothing unnatural in this conduct, nor does it indicate guilt.

It clearly appears that he returned to the house, and continued there about an hour, before he went for the coroner; and in this part of her testimony Mrs. M'Gee is certainly mistaken. On this point she stands contradicted: and how far it detracts from her credibility in other particulars, is left for you to determine.

The two women agree in many particulars in their testimony, but they disagree on the subject of the wife's speaking to the prisoner the evening preceding her death.

The conduct of Mrs. M'Gee, in not rising in the morning immediately on hearing of the death, has been criticised with much severity by the prisoner's counsel: but it should be recollected that fear operates differently on different minds; and, therefore, it appears to me that this circumstance is rather of an equivocal nature.

The fair construction of the whole testimony adduced, on the subject of domestic difficulties, is, that they lived as peaceable together as is common with people in that condition; and I think we may say with confidence, that the ground assumed by the counsel for the prosecution, in the opening, intended to be founded on family discord, has totally failed.

In his examination, the prisoner has been consistent. He has uniformly given the same account of this transaction. The usual concomitants of guilt are flight—alarm—concealment. It must be conceded that these indications of guilt cannot be imputed to the prisoner. He never denied the knife was his—he made no effort to conceal it—he did not endeavour to effect his escape.

There are several suppositions which may be framed concerning this murder.

1 She might have murdered herself.

2. She might have been murdered by some person before the prisoner returned in the evening.

3. She might have been murdered after his return, and during the night; and this last supposition is strongly fortified by the various circumstances in the case. If she was not murdered before the return of the prisoner, then the conclusion is irresistible that she was murdered by one of the three persons who staid in that apartment during the night, unless she committed suicide.

All the facts and circumstances in the case, forbid the conclusion, either that she was murdered by any person before the return of the prisoner in the evening, or, that she murdered herself either before or after his return. The prisoner himself, in his examination, shows that the deceased spoke and conversed after his return; and no instrument was found near the body, by which she inflicted the wound.

It therefore follows, that she was murdered by one of the three persons who staid in that room during the night; by which of them, it is impossible to say. Is it improbable that some other person in that room, beside the prisoner, rose in the silence of the night, took that knife from his pocket, inflicted the wound, and returned the weapon to its place, to cast the odium of such a horrid deed on the prisoner? What person this was, it becomes us not to say, nor is it necessary to inquire.

Upon the whole, gentlemen, notwithstanding every effort to fathom this mysterious transaction, and arrive at the truth, we find ourselves embarrassed with difficulties, and a painful doubt rests on the mind. It only remains for me to charge you, that so dark is the whole transaction before us, and so involved in uncertainty is this case, that it would be utterly unsafe, on this testimony, to convict the prisoner: and, when I say this, I wish it to be distinctly understood, that I express the unanimous opinion of the court.

The jurors retired, and in about five minutes returned with a verdict, not guilty.

By the Court.—Patrick Blake, you are discharged.

Quere. Reader, in this dark affair, is there not something s ill behind the curtain?